

Public park maintenance. A nonprofit organization with membership open to the general public that was formed by residents of a city to help preserve, beautify, and maintain a public park located in the city and whose support is derived from membership dues and contributions from the general public is operated exclusively for charitable purposes and qualifies for exemption under section 501(c)(3) of the Code; Rev. Rul. 75-286 distinguished.

Advice has been requested whether the nonprofit organization described below, which otherwise qualifies for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954, is operated exclusively for charitable purposes.

The organization was formed by residents of a city to cooperate with municipal authorities in preserving, beautifying, and maintaining a public park located within the center of the city. The activities of the organization consist of planning the horticultural design of the park; planting trees, flowers, and shrubs; designing the trash containers to be used in the park; mowing the grass; and picking up litter. The organization uses volunteers to perform these activities.

The park is located in a heavily trafficked, easily accessible section of the city and is surrounded by high rise apartments, hotels, office buildings, and commercial establishments. The park and its facilities are open to the general public and are commonly used by citizens of the entire city. Membership in the organization is also open to the general public.

The organization's support is derived from membership dues and contributions from the general public. No charges are made for its services.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for charitable purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term 'charitable' is used in section 501(c)(3) in its generally accepted legal sense.

In charity law the courts have consistently upheld trusts dedicated to community beautification and the preservation of natural beauty. in the words of one commentator:

A trust is charitable where the purpose is to contribute to the aesthetic enjoyment of the community. Thus the courts have upheld a trust for the development of the Palisades along the Hudson River; a trust for promoting the permanent preservation of lands of beauty or historic interest; a trust to beautify a city by the planting and maintaining of shade trees; a trust to preserve a forest and wild lands intact as a park to which visitors shall be allowed access. (IV Scott on Trusts (3rd ed. 1967), section 374.10.)

See also, Restatement (Second) of Trusts, section 374 (comment f) (1959) and Bogert, Trusts and Trustees (2d ed. 1959), section 378 at 179, 180; President and Fellows of Middlebury College v. Central Power Corp. of Vermont, 143 A. 348 (Vt. 1928); Noice v. Schnell, 137 A. 582 (N.J. 1927); and Cresson's Appeal, 30 Pa. 437 (1858).

Prior Revenue Rulings have recognized as charities organizations that devote their assets to the maintenance and improvement of community recreational facilities and parklands. For example, Rev. Rul. 70-186, 1970-1 C.B. 128, holds that an organization formed to preserve a lake as a public recreational facility and to improve the condition of the water in the lake to enhance its recreational features is exempt under section 501(c)(3) of the Code. Similarly, Rev. Rul. 68-14, 1968-1 C.B. 243, holds that an organization formed to promote and assist in city beautification projects and to educate the public in the advantages of street planting is exempt under section 501(c)(3).

By planting trees, flowers, and shrubs, by maintaining the facilities in the park, and by mowing the grass and by picking up litter, the organization is insuring the continued use of the park for public recreational purposes. Activities of this type are similar to those that have been recognized by both the courts and the Service as appropriate means of furthering charitable purposes.

The benefits to be derived from the organization's activities flow principally to the general public through the maintenance and improvement of public recreational facilities. Any private benefits derived by nearby property owners do not lessen the public benefits flowing from the operations of the organization and are only incidental to the accomplishment of the exempt purposes of the organization.

Accordingly, based on the facts described above, the organization is operated exclusively for charitable purposes and, thus, is exempt from Federal income tax under section 501(c)(3) of the Code.

Rev. Rul. 75-286, 1952-2 C.B. 210, which holds, in part, that an organization with membership limited to the residents, property owners, and business operators within a city block and formed to preserve and beautify the public areas on the block, does not

qualify for exemption under section 501(c)(3) of the Code, is distinguishable because the organization in that Revenue Ruling serves the private interests of its members within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

Even though an organization considers itself within the scope of this Revenue Ruling, it must file an application on Form 1023, Application for Recognition of Exemption, in order to be recognized by the Service as exempt under section 501(c)(3) of the Code. The application should be filed with the District Director of Internal Revenue for the key District indicated in the instructions to Form 1023. See sections 1.501(a)-1 and 1.508-1(a) of the regulations.

Rev. Rul. 75-286 is distinguished.